United Nations A/69/338

General Assembly

Distr.: General
21 August 2014

Original: English

Sixty-ninth session
Item 68 of the provisional agenda*
Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Commission on Human Rights resolution 2005/2, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of people to self-determination.

* A/69/150.

14-59556 (E) 190914

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The Working Group has chosen to dedicate the present report to the subject of the use by the United Nations of private security companies in light of the vast and complex challenges which outsourcing security to private military and security companies* poses to the United Nations and to local populations. The report is the outcome of a yearlong study, which aimed at examining how the United Nations contracts private military and security companies and for what services. It reviews the efforts undertaken by the United Nations to mitigate risks relating to the recruitment of private security providers, in particular the recently adopted policy and guidelines on the use of on private armed guards. The report considers the limitations of these policy tools and makes suggestions on ways and means to ensure an efficient selection and vetting process when employing private security companies. It also examines ways that will ensure that private military and security companies are held accountable for possible human rights violations in the event that these occur.

* While the United Nations contracts companies solely for security services, these same companies are also known to provide military services in other circumstances.

I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 24/13 and General Assembly resolution 68/152. Pursuant to its mandate, the Working Group on the use of mercenaries as a means of violating human rights and the exercise of the right of peoples to self-determination has continued to monitor mercenaries and mercenary-related activities in all their forms and manifestations, as well as to study the effects on the enjoyment of human rights of the activities of private companies offering military assistance, consultancy and security services on the international market. The Working Group has chosen to dedicate the report to the subject of the use by the United Nations of private security companies in light of the vast and complex challenges which outsourcing security to private military and security companies poses to the United Nations and to local populations.

2. Since the 1990s, the United Nations has used private security companies, mostly unarmed local contractors, to secure its premises and protect its staff and/or assets against criminal activities. In recent years, it has also contracted armed private security companies in complex emergency situations and post-conflict or conflict areas where the host Government was not in a position to provide for the security of United Nations personnel and assets.

3. The vast and complex challenges that outsourcing security to private military and security companies poses to the Organization and to local populations led the Working Group to undertake the present analysis. The objective of the report is to examine how the United Nations contracts such companies and what services are provided by them. The report also reviews the efforts undertaken by the Organization to mitigate risks relating to the recruitment of private security providers, in particular the recently adopted policy and guidelines on the use of private armed guards. In addition, it considers the limitations of these policy tools and makes suggestions on ways and means to ensure an efficient selection and vetting process when employing private security companies. Finally, the report examines ways that will ensure that such companies are held accountable for possible human rights violations in the event that these occur.

4. The Working Group carried out a yearlong research on the use of private military and security companies by the United Nations. It held consultations with United Nations officials, including officials of the Department of Safety and Security,[1] industry representatives, academics and civil society experts. It also held two public events on the issue.

5. The first public event was organized by the Working Group during its nineteenth session in New York on 31 July 2013 and comprised two panels of experts. The first panel addressed the issue of the use of private military and security companies by the United Nations as armed guards while the second panel addressed their use in peace operations. During its twenty-first session, on 5 March 2014, the Working Group also organized another public event in Geneva. This event

[1] The overall mandate of the Department of Safety and Security is to provide leadership, operational support and oversight of the security management system to enable the safest and most efficient conduct of the programmes and activities of the United Nations system. The Working Group held meetings with officials of the Department during its annual sessions in New York in 2012 and 2014.

focused on the challenges faced by the Organization when outsourcing various security tasks to private contractors as well as the risks posed to United Nations operations, its staff and to local populations. Both events were attended by representatives of Member States, non-governmental organizations and industry and by United Nations staff. The Working Group expresses its gratitude to the experts who contributed to these events. It also wishes to thank the Department of Safety and Security for its cooperation during the drafting of this report and for the opportunity to discuss the findings of the study with officials of the Department during its twenty-second session in New York, as well as for the feedback provided to the Working Group.

6. The Working Group intended to conduct a field visit to the United Nations Assistance Mission in Afghanistan (UNAMA) in May 2014 to assess the use of armed private security companies by a United Nations operation. It was not able to undertake the visit, however, owing to the prevailing volatile security situation. It wishes to thank the Mission for providing responses in writing to the questionnaire that was sent in lieu of the visit.

7. In light of the wide scope of the topic under consideration, the Working Group has chosen to focus this report on the practices of the Secretariat, including the operations of the Department of Peacekeeping Operations and the Department of Political Affairs, when recruiting private military and security companies. The report discusses both armed and unarmed PMSCs and the respective services that they provide, which include the guarding of premises and the protection of convoys.

II. United Nations use of private military and security companies

A. Why and when does the United Nations resort to the use of private military and security companies?

8. The proliferation of conflicts, the fact that local populations have become more vulnerable to human rights violations and the effects of a rising number of humanitarian crises have led to an increase in requests from Member States for the United Nations to carry out programmes in high-risk environments. This has also led the Organization, through its United Nations System Chief Executives Board for Coordination (CEB), to adopt a new strategic vision in 2009 and to institute a policy shift in security management from a "when-to-leave" to a "how-to-stay" approach. The aim of this new policy was to support the delivery of United Nations mandated programmes and activities, even in highly challenging security situations.[2] As a consequence of operating in areas where high security threats prevail, the Organization has suffered attacks against its personnel and premises which have caused many deaths, notably in Afghanistan, Algeria, Iraq, Nigeria, Timor-Leste and Somalia.

[2] A/67/624, para. 7. The Advisory Committee on Administrative and Budgetary Questions is a subsidiary body of the General Assembly. In budget years, the Committee submits to the Assembly a detailed report on the proposed programme budget for the biennium. In addition, it submits reports on the accounts of the United Nations and all United Nations entities for which the Secretary-General has administrative responsibility.

9. Currently, United Nations personnel serve in an increasingly dangerous environment and encounter a variety of threats not previously encountered in the history of the Organization. Despite diverse security threats against the United Nations, the demands for the Organization to operate in challenging security environments continue to grow.[3] As a consequence of the strategic shift from "when to leave" to "how to stay" and of the diminishing capabilities of Member States to provide for the security of United Nations personnel and assets, the United Nations reliance on the use of private security companies has increased in recent years with a view to mitigating the high risks to its personnel. The United Nations has the obligation, nevertheless, to explore other options to ensure the safety and security of its personnel, premises and assets before resorting to the use of armed private security companies. These other options include seeking security management support of the host Government or alternate Member States, or United Nations capacity that may be available internally.[4]

10. In addition to direct contracting, private military and security companies may become a part of United Nations operations through the contributions of Member States, which can also increase the reliance of the Organization on private security companies. In such instances however, cases of misconduct by private security contractors that may be detrimental to the human rights of local populations and harmful to the credibility of the Organization would fall under the responsibility of the Member States who contracted the companies.

11. In May 2014, the Working Group received information indicating that there are some 30 unarmed and armed companies used in peacekeeping missions and special political missions.[5] Overall, the United Nations uses armed private security companies in three countries and uses unarmed private security companies in 12 countries where there are peacekeeping missions and 11 countries where there are special political missions. The total estimated budget for 2013/2014 for the use of private security companies is approximately $42,125,297 including $14,015,520 for armed services as follows: MINUSTAH ($5,125,200) and UNAMA ($8,890,320).[6]

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[3] A/68/489, para. 4.

[4] Response provided by the Department of Safety and Security to a written questionnaire, May 2014.

[5] There are 17 operations/missions led by the Department of Peacekeeping Operations and 12 missions headed by the Department of Political Affairs. There are 12 peacekeeping operations contracting United Nations unarmed private security companies (United Nations Mission in the Sudan (UNMISS), United Nations Interim Security Force for Abyei (UNISFA), United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), United Nations Interim Force in Lebanon (UNIFIL), United Nations Operation in Côte d'Ivoire (UNOCI), United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), United Nations Interim Force in Lebanon (UNIFIL), United Nations Mission for the Referendum in Western Sahara (MINURSO), United Nations Interim Administration Mission in Kosovo (UNMIK), United Nations Stabilization Mission in Haiti (MINUSTAH), United Nations Military Observer Group in India and Pakistan (UNMOGIP) and United Nations Assistance Mission in Afghanistan (UNAMA) and one facility of the Department of Field Support that contracts an armed private security company United Nations Support Office for the African Union Mission in Somalia (UNSOA). Two peacekeeping missions contract armed private security companies (MINUSTAH and UNAMA)). For peacekeeping missions, of the total of 4,412 security guards contacted by the 13 entities above, 574 are armed. Three hundred of those are in UNAMA.

[6] Information provided by the Department of Safety and Security on 16 July 2014.

B. The need for increased transparency regarding information on United Nations use of private military and security companies

12. Until recently, accessing official information on the use of private military and security companies by the United Nations has been a challenging task. The Organization did not normally make information relating to security management public as it is seen as sensitive.

13. However, since the end of 2012, the United Nations has published a number of documents on its use of private military and security companies. In October 2012, the Secretary-General, for the first time, presented a report to the General Assembly on the use of private security (A/67/539), following a request from the Assembly for a review of the appropriateness of the use of private security personnel, particularly in situations in which they were the only option available to provide safety and security for staff. The report did not, however, provide any information on the number or names of companies used by the United Nations, nor did it address the question of unarmed services provided by such companies. A subsequent report of the Advisory Committee on Administrative and Budgetary Questions[7] gave further information on the services provided by such companies. Annexes I and II of that report indicated that a total of $30,931,122 had been approved by the General Assembly for 2012/2013 for private military and security companies in special political missions and peacekeeping operations. The report also indicated that 42 such companies were under contract with those special missions and operations as at 31 October 2012, employing over 5,000 armed private guards. It also showed that contracts for armed guards were estimated at $40,914,000 in 2013-2014, with a large portion linked to new contracts for the United Nations Assistance Mission in Somalia (UNSOM).[8]

14. Subsequent to the reports of the Secretary-General and the Advisory Committee, the General Assembly adopted resolution 67/254 A, in which it stressed, in line with the views expressed by the Secretary-General in his report, that armed private security services "should be used as a last resort to enable United Nations activities in high-risk environments only when a United Nations security risk assessment concludes that other alternatives, including protection by the host country, support from the Member States concerned or internal United Nations system resources are inadequate". The Assembly also stressed the importance of ensuring that all measures are undertaken to avoid legal and reputational risks for the Organization in using armed security services of private security companies and called on the Secretary-General to ensure that the selected companies operate in accordance with the national legislation of the host country and the Charter of the United Nations and fully abide by the relevant principles and rules of international human rights law, international humanitarian law and international criminal law. In addition, the Assembly requested the Secretary-General to "provide clarification on the operational criteria for when the use of armed security services from private security companies could be appropriate for United Nations operations at Headquarters and field locations and to report thereon in the relevant reports to the General Assembly".

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[7] A/67/624.

[8] Ibid., annexes I and II.

15. Conscious of the need for the Organization to have a policy on private military and security companies, the Secretariat has adopted a United Nations system-wide policy on armed private security in 2012 and has recently made efforts to increase transparency in providing further information on the use of private security contractors. The increased awareness of States with respect to the risks and challenges linked to the outsourcing of security services is timely and the Working Group welcomes this development.

C. Is hiring private military and security companies necessary, and is it the only practicable solution to ensure the security of United Nations staff and operations?

16. The Working Group has held discussions with a number of United Nations officials dealing with security matters. The question as to whether other options to outsourcing security to private security contractors might be considered has been met with the response that the Organization lacks the internal capacity to provide for the safety and security of its staff deployed in highly volatile environments.

17. Among the reasons identified in support of the outsourcing of security were: the conflicting views, instructions, funding and permissions from Member States, who consistently oppose the growth of staff numbers; the lack of appropriately trained in-house security staff; the administrative challenges to the redeployment of United Nations security staff from their present duty stations and their replacement with trained staff; the lack of "unity of command" in the Organization; and the high staff cost of United Nations employees.

18. According to security officials, the services of private security companies are readily available and there is no commitment to keeping them on board once they have served their purpose. They also pointed out that expenses relating to the recruitment of private contractors are significantly lower than the salary, training and common staff costs for United Nations employees.

D. What are the risks and challenges posed by outsourcing security to private contractors?

19. The Working Group also held discussions with a number of representatives of the United Nations Staff Union who explained the concerns of staff with regard to the increasing use of private security contractors by the Organization. These concerns were voiced during the two panel events organized by the Working Group, in which some of the representatives participated.

20. According to a Staff Union representative, a growing number of staff believe that the United Nations is no longer a shield but a target. Since 2003, 567 civilian staff were attacked and over 200 killed. The Working Group supports the view that the Organization has the duty to provide for the safety and security of those working in areas where security threats are high, and it notes that some staff have expressed a lack of confidence in their security being outsourced to private security contractors.

21. Based on the testimonies collected, the Working Group notes that because local security guards, in many instances, are not well paid, poorly equipped and

work very long shifts, their capacity to adequately respond to threats in highly volatile security environments is compromised. It is concerned by the current lack of screening by the United Nations of private security contractors and individual security guards working at United Nations field operations. In addition, the Working Group believes that the Organization needs to be mindful of cultural diversity and local political perceptions when hiring private security guards in order to ensure that it is always perceived as an independent and impartial entity.

22. Presently, the Guidelines on the Use of Armed Security Services from Private Security Companies, issued by the Department of Safety and Security in November 2012, require that private security contractors providing armed services must certify in writing that they have verified with the relevant national authorities that any potential personnel: (a) have not been convicted of any national criminal offences, including by a military tribunal, or found by a national or international authority to have breached international criminal or humanitarian law in any jurisdiction, and (b) are not subject to any ongoing judicial proceedings, including military, in respect of such offences or violations. However, the screening is not conducted by United Nations officials and the Working Group firmly believes that it is not sufficient to rely on information provided by security providers to ensure that the concerned companies and employees comply with United Nations standards and human rights norms.

23. In this regard, the Working Group is concerned that in some situations, local security guards may be former militia men who may have been involved in human rights violations. While acknowledging that this is difficult to ascertain, the Working Group realizes that the lack of adequate screening by the United Nations may lead to situations where a humanitarian convoy could be escorted by local security guards in a particular location where they may have committed atrocities in the past. The Working Group is also concerned that private security guards may be affiliated with a particular local tribe or group, which may hamper the perception of independence and impartiality of the United Nations in the eyes of local populations. This is particularly so when contracted private military and security companies outsource a number of activities to other companies through subcontracting schemes, making oversight and regulation even more complex and difficult to manage.

24. In an environment where companies frequently change names and places of registration, and where individual contractors dismissed for misconduct by one company may be employed by another, it is essential to have a well-functioning screening and vetting system in place to ensure that those who are recruited have a record that is in compliance with the values of the Organization that they are protecting, and with human rights norms in particular.

25. The reputational challenge of the United Nations is further compounded by reports of companies that it has employed in spite of their allegedly dubious human rights records, as reported in certain cases in Bosnia and Herzegovina, the Democratic Republic of the Congo and Uganda.[9]

26. In the light of the various concerns outlined above, the Working Group is supportive of an approach whereby the Organization would prioritize deploying

[9] Lou Pingeot, "Dangerous Partnership, Private Military and Security Companies and the United Nations", Global Policy Forum, July 2012, p. 28 and 29.

United Nations security officers to the field as they are perceived as independent and impartial by local populations.

III. Steps taken by the United Nations to mitigate these challenges: the policy and guidelines on private armed guards

27. In November 2012, the Department of Safety and Security issued a policy on the use of armed security companies and accompanying guidelines. The policy was the result of a process within the Inter-Agency Security Management Network, which brings together representatives of United Nations agencies, funds and programmes to coordinate security practices and policies across the United Nations system. This policy represents a significant step forward in the Organization's efforts to develop a comprehensive, system-wide policy for security contracting. Many positive elements introduced by this policy will improve transparency and human-rights compliance by private military and security companies under contract with the United Nations.

28. The Guidelines on the Use of Armed Security Services from Private Security Companies aim to clarify the chain of accountability for decisions to use armed private security. Under the Guidelines, the recommendation to use armed private security personnel must be made by the designated official and the security management team. Moreover, to ensure clarity in the line of accountability and responsibility of all actors in the United Nations security management system, United Nations policy and the Guidelines make specific reference to its policy on the framework of accountability.[10] The Guidelines state that the senior-most United Nations security professionals advising the designated official must first conduct a security risk assessment. These officials can include the Chief Security Adviser, the Security Adviser, the Chief of Security and Safety Services or their respective officer-in-charge ad interim. The final decision must ultimately be approved by the Under-Secretary-General for Safety and Security. Some representatives of the United Nations Staff Union have expressed concern that having numerous officials involved in this decision-making process undermines individual accountability for the final recommendation.

29. A positive element of the Guidelines is the increased transparency and visibility of the use of these companies system-wide. When the designated official and security management team agree that the use of armed private security companies is warranted, the request is sent to the Under-Secretary-General for Safety and Security for consideration. Guideline 20 requires that the Executive

[10] A/67/526, para. 12. The first framework of accountability for the United Nations security management system was created in 2002. It was one of the first formalized internal accountability frameworks in the Organization, applicable across the United Nations system. Following the approval by CEB of a revised framework of accountability in 2009 that more clearly delineated the roles and responsibilities of actors in the United Nations security management system, at all levels, the framework was presented to the General Assembly in 2010. The Assembly took note of the report of the Secretary-General in its resolution 65/259, including the revised framework of accountability. The revised framework was subsequently promulgated throughout the United Nations security management system in 2011 (see A/65/320 and Corr. 1, annex I).

Heads of the affected agencies, funds and programmes or the head of the Department for Secretariat-led field operations must be copied on the request. When the Under-Secretary-General approves a request, he must notify all agencies, funds, programmes and organizations of the United Nations system of his decision within 48 hours. The Guidelines also require that the request for armed private security services must detail an assessment of the potential negative impacts of engaging armed security services from a private security company, an important and necessary consideration.

30. Through consultations with several stakeholders on the new Guidelines, the Working Group has identified a number of gaps. These gaps focus on the following main points: the relatively narrow scope of the policy as covering only armed private security companies hired directly by United Nations entities as opposed to unarmed services; shortcomings in the "last resort" criteria for using private military and security companies; the lack of internal screening and vetting procedures; the fragmented decision-making process; and the lack of human rights due diligence and accountability mechanisms.

A. Limited scope

31. While the Guidelines relate exclusively to armed security contractors, private military and security companies providing unarmed services can also pose risks and it is paramount that the regulation of such services be effectively addressed by the Organization. For example, United Nations personnel have expressed concern that even unarmed private security providers can provide inside information that can be used to attack United Nations personnel or facilities. There is currently no United Nations security management system policy on the use of unarmed private security companies apart from the administrative and procurement policies of each separate United Nations entity. The United Nations nevertheless applies a system-wide policy in the framework of accountability in an effort to address the oversight of security services or performance provided by unarmed private security companies.[11]

32. Private military and security companies are integrated into United Nations operations in several ways. They are hired directly by United Nations entities, and these contracts should be covered by the Guidelines promulgated by the Department of Safety and Security. However, such companies are also used at United Nations operations by implementing partners through programmes carried out by Member States.

33. Companies acting as implementing partner or hired by implementing partners would not be subject to the standards and procedures set out in the Guidelines promulgated by the Department of Safety and Security. For example, companies providing de-mining services for the United Nations Mine Action Service and for other United Nations projects must operate in high-risk environments. Companies may be contracted to transport food and supplies through dangerous areas. Should these companies hire private security to protect their personnel, these private security companies would be working side by side in the field with United Nations contracted companies, but would not be subject to the Guidelines. To local

[11] Response provided by the Department of Safety and Security to a written questionnaire, May 2014.

populations, they would likely be indistinguishable from United Nations implementing partners, and therefore their actions, if perceived negatively in the field, may pose a potential risk to the local populations and to the reputation of the Organization in those locations. There is a potential that harm could be caused to the reputation of the United Nations through its association with such companies.

34. Through programmes such as the Global Peace Operations Initiative of the United States Government, Member States may hire private military and security companies to carry out training and capacity-building of local peacekeepers to serve at United Nations peacekeeping missions.[12] The United States of America fully outsourced its responsibilities to demobilize and reconstitute the armed forces of Liberia under the umbrella of UNMIL to DynCorp and PAE, private military and security companies. As DynCorp was contracted by the United States of America, and not UNMIL, it would not have been subject to the Guidelines, despite its significant influence and operations with the United Nations mission.

35. Most importantly, while the Guidelines cover only armed private security companies, there may be a need for the United Nations to consider establishing a comprehensive policy for the United Nations use of unarmed private security.

B. "Last resort" criteria

36. United Nations officials who support the use of armed private security companies have stated repeatedly that such contracts were to be made only as a last resort. The report of the Secretary-General on the use of private security issued in October 2012 (A/67/539), a month before the Guidelines were published, reflects the methodology prescribed in the Guidelines. In that report, the Secretary-General explained that, in May 2011, he decided, on the basis of consultations within the United Nations system: that the Organization should resort to the use of armed private security companies and their personnel only as the last option to enable United Nations activities in high-risk environments; that the United Nations should exercise that option only when a United Nations security risk assessment had concluded that other alternatives, including protection by the host country, other support from Member States or internal United Nations system resources, were insufficient; and that the use by the United Nations of an armed private security company should be consistent with national and international law, the Charter and relevant United Nations resolutions, including General Assembly resolution 55/232 on outsourcing practices; and relevant United Nations administrative policies and guidelines.

37. The subsequent resolution of the General Assembly, resolution 67/254 A, also makes reference to the "last resort" criterion. In that resolution, the Committee called the use of armed private security services an exceptional measure, and stressed that such services should be used as a last resort.

38. These officials and documents refer to the criteria of last resort as though it were a gold standard for risk assessments and security decision-making. However, the Guidelines issued by the Department of Safety and Security lack clarity as to

[12] Åse Gilje Østensen (2013), "In the Business of Peace: The Political Influence of Private Military and Security Companies on UN Peacekeeping", International Peacekeeping, vol. 20, No. 1, pp. 33-47.

how it is to be established that other options have been exhausted. The Guidelines establish that the designated officer and the security management team must "identify strong reasons" as to why the delivery of armed protection by the host country, other Member States or the United Nations system is "not preferable or feasible". As one expert has pointed out, this standard is insufficiently clear to ensure that such assessments do not merely provide a cover to justify the use of contractors.

39. The determination of last resort may also be influenced by political considerations as well as by the security risk assessment. The willingness of Member States to provide sufficient security resources is often influenced by their belief that the necessary resources will be provided by the private sector, and that the necessary United Nations activities will take place even without their participation. Although Member States may financially be able to provide security, they may be unwilling or resistant to the concept that their funds will go to cover the expenses of perimeter guards rather than to programme expenses that have tangible benefits to the State and its population. Furthermore, States that have not fully accepted or agreed to United Nations engagement on their territory may also be able to provide the necessary security, but may not be willing to do so. Other States may likewise be less willing to provide security in this situation, as unwanted or unpopular United Nations intervention may increase the vulnerability of United Nations staff and facilities, including guards provided by Member States. Thus, although private military and security companies may be the most politically expedient option in these circumstances, this is not the same as the option of last resort.

C. Lack of internal screening and vetting procedures and accountability mechanisms

40. The Guidelines promulgated by the Department of Safety and Security do not establish internal comprehensive procedures for the selection and vetting of private military and security companies, nor do they provide for monitoring and oversight procedures, a human rights due-diligence component or accountability mechanisms in the event that human rights violations are committed by the employees of such companies. Instead, the Guidelines outsource many of these elements to the governing body of the International Code of Conduct for Private Security Providers (ICoC),[13] the ICoC Association. The Working Group believes that the Association can complement, but not replace a United Nations-managed process for human rights due-diligence monitoring and oversight. However, it is also conscious of the challenges that a United Nations-led screening process would entail. Consequently, the Working Group is of the view that, at the very least, the Organization should only contract those companies that have a solid vetting system in place and are able to exclude personnel who have committed human rights violations.

[13] The International Code of Conduct for Private Security Providers is a multi-stakeholder initiative convened by the Government of Switzerland. It aims to set private security industry principles and standards based on international human rights and humanitarian law, as well as to improve accountability of the industry by establishing an external independent oversight mechanism.

41. Section F of the Guidelines outlines the mandatory requirements for the pre-eligibility and selection of private military and security companies, including the requirement that concerned companies must be signatories to the International Code of Conduct. However, although the Guidelines were promulgated in December 2012, it would appear that contractors are not yet being asked to submit proof that they are signatories to the Code along with their tenders for United Nations contracts. Private military and security companies are requested to confirm in writing that a screening process has been conducted and that only the personnel who meet the requirements outlined in section F of the Guidelines are to be engaged to provide armed security services. While these are positive developments, they clearly do not suffice to ensure adequate screening and vetting of these companies and their employees.

42. It is the view of the Working Group that the Guidelines do not address the issue of accountability in the event of human rights violations committed by private military and security companies. As the United Nations is paying particular attention to the issue of due diligence, it is important that this principle is applied in its work with all stakeholders. This is in line with the human rights due diligence policy, which was endorsed by the Secretary-General in July 2011. This policy constitutes a landmark measure to ensure that the United Nations lives up to its own normative standards by guaranteeing that its support to national and regional security forces is consistent with the Organization's purposes and principles as set out in the Charter, as well as its obligations under international law to respect, promote and encourage respect for international humanitarian, human rights and refugee law.

43. Like all private companies, private military and security companies have a responsibility to operate with respect for human rights, as stipulated in the United Nations Guiding Principles on Business and Human Rights. This may include implementing vetting and training procedures for employees, establishing grievance procedures in case of violations and conducting regular monitoring to ensure adequate oversight, immediate cessation of violations and accountability.

44. In the event that violations occur, victims must be provided with adequate remedies, such as reparation and rehabilitation. States have the obligation to ensure that cases of violation are referred to the concerned authorities for investigation, prosecution and reparation.

45. Finally, the Guidelines issued by the Department of Safety and Security do not provide for sanctions against private military and security companies in the event of non-compliance with human rights standards, such as criminal investigations, civil suits and/or debarments, or by publishing this information, where possible. For complex organizations, such as the United Nations, it is also important that information about improper performance or misconduct be shared among the various agencies that contract for security services in order to prevent such companies from being rehired elsewhere.[14]

[14] Elke Krahmann, "How to strengthen the 'United Nations Guidelines' on the use of armed guards and their application: examples of best practices", March 2014.

D. Fragmented decision-making process

46. While the Under-Secretary-General of the Department of Safety and Security makes the final decision on the use of armed private security companies following the recommendation from the field through the designated official for security based on security risk assessment, the selection of the armed private security companies takes place at the operational level.

47. According to information provided by the Department of Safety and Security, each United Nations operation and entity, in consultation with the Department and relevant actors at United Nations Headquarters, has the authority to select a private security company.

48. In the absence of a host country Government, or where the existing host country Government is unable to provide the assessed level of security, alternate provision from Member States or by United Nations-recruited security officials must be explored and discussed by the designated official, the security management team and the United Nations security experts. In cases where the designated official and the security management team identify strong reasons, which are to be recorded in the security risk assessment, whereby the delivery of armed security by the host country, an alternate Member State or by United Nations recruited security officials is not available or inadequate, the option to use a private security company may be evaluated according to the criteria articulated in the policy and the Guidelines.

49. The Working Group believes that by delegating the authority to select private military and security companies, both armed and unarmed, to United Nations entities at the operational level, and by placing the responsibility on such companies to prove that they have demonstrated due diligence in checking that their employees are not involved in human rights abuses, the Organization has limited oversight of the selection process.

50. The report of the Independent Panel on the Safety and Security of United Nations Personnel in Iraq, issued on 20 October 2003, following the bombing of the Canal Hotel in Baghdad on 19 August 2003, in which 22 United Nations staff were killed, identified the lack of accountability for the decisions and positions taken by United Nations managers with regard to the security of United Nations staff as a major deficiency. The panel indicated that the United Nations needed a new culture of accountability in security management and that personal accountability of those entrusted with the safety of personnel as well as all staff in the field for their compliance with security rules should be paramount. The Working Group notes however that subsequently, the United Nations has adopted the system-wide policies, including the framework of accountability, which outlines the responsibilities of relevant actors in providing for the protection of the United Nations.

51. In light of the above statement, the Working Group is of the view that the Organization needs to continue to take all the necessary steps to ensure that the decision-making process to select and recruit private military and security companies is consistent, transparent and closely monitored by the head of the Department of Safety and Security.

IV. Case study of the United Nations Assistance Mission in Afghanistan and observations of the Working Group during its visit to Somalia

52. The United Nations Assistance Mission in Afghanistan (UNAMA) uses IDG Security (Afghanistan) Limited, which provides armed and unarmed guards. IDG Afghanistan supplies armed Gurkha guards for internal duties in the UNAMA compound. The United Nations agencies, funds and programmes have their own contracts for internal unarmed guards in their respective areas of the UNAMA compound. For example, the United Nations Children's Fund has a single contract for these services with Triple Canopy, and the Office of the United Nations High Commissioner for Refugees has a contract with Hart Security.[15]

53. According to information provided to the Working Group by UNAMA, screening and vetting of private security companies, both local and international, is undertaken during the technical evaluation process, which is part of the UNAMA procurement process. The security team evaluates the companies' proposals against prior established criteria, including their company's profile; experience in providing security services; ability to develop and implement standard operating procedures; emergency plans/training programmes, performance monitoring mechanisms; record-keeping; skills, qualification and vetting of personnel; firearms management; insurance coverage of personnel; certifications and references of quality performance; and licences. If required, procurement may ask the companies for additional information, including documentation or on-site inspection.

54. According to UNAMA it is a requirement in the contract that private security companies verify with relevant government bodies, to the Mission's satisfaction, that personnel have been properly screened, including in respect of allegations or convictions regarding breaches of military, international criminal or humanitarian law.

55. The international companies mentioned are locally registered in Afghanistan. The Ministry of Interior authorizes specific private security companies to provide armed services in Afghanistan. The list is maintained and reviewed by the Ministry. While procuring armed services, UNAMA only uses companies on the Ministry's list, and only those in the list may participate in the bidding exercise.

56. At UNAMA, compliance with United Nations policy and the Guidelines on the use of Armed Security Services from Private Security Companies is included as a requirement in the respective contracts. Private security companies must also guarantee under the contracts that they are aware of and in compliance with international and local laws, as well as the International Code of Conduct for Private Security Service Providers (2010). The responsible officer from UNAMA liaises with the project manager of the private security companies on a regular basis to review performance and to monitor the requirements of the contract as per the Guidelines and to document non-compliance, if any. The companies apply a "use-of-force" policy as a condition of the contract. These must be consistent with the standards of the United Nations use-of-force policy and standard operating procedures.

[15] Replies to a questionnaire sent by the Working Group to UNAMA, May 2014.

57. The UNAMA Chief Security Officer or adviser is responsible for certifying with the Procurement Section that the private security companies are providing satisfactory service, based on regular assessments and inspections. UNAMA has a contractual right to demand the withdrawal of specific personnel. UNAMA retains the right to inspect the services provided, or to update the standards and policies that the companies are required to apply. The United Nations common premise guard force manager (UNAMA international staff) oversees the effectiveness and compliance of armed and unarmed guards with the terms of reference and United Nations standard operating procedures (country-wide or compound-specific) on a daily basis. UNAMA has indicated that any deviation from these requirements is to be reported and addressed.

58. The Working Group asked what action UNAMA would take if private security companies were found to be in breach of these United Nations standards and human rights norms. Representatives of the Mission responded that it has a general right to terminate contracts on 30 days' notice. This right could also be exercised in the case of breaches of United Nations standards or human rights norms. The contract includes provisions against child labour and sexual exploitation and abuse as essential terms, a breach of which would allow the United Nations to terminate the contract immediately. UNAMA also retains the right under the contract to deal with other failures to perform under the terms and conditions of the contract, such as non-compliance with standard operating procedures, training programmes or performance monitoring measures. The sanction may include reduction in payments based on an accumulation of demerit points. Consistent non-compliance may lead to termination of a contract.

59. UNAMA has indicated that, to date, private military and security companies providing services to it have never been in breach of their contracts. While acknowledging the efforts undertaken to improve the selection and evaluation process of such companies, in accordance with the information provided above, the Working Group believes that the measures in place are not sufficient to guarantee that the personnel of these companies are adequately vetted and held accountable in the event of human rights violations. Moreover, since the selection and oversight of armed and unarmed private security contractors is delegated at the operational level, recruitment and evaluation practices may be deferred from one field operation to another and the United Nations Guidelines may be implemented inconsistently across United Nations missions.

60. The Working Group visited Somalia in December 2012. Some of its observations with respect to the United Nations Political Office for Somalia (UNPOS) are relevant to this study and triggered the decision of the Working Group to undertake the present analysis.[16] During its visit, the Working Group observed that armed protection to international organizations and non-governmental organizations in Mogadishu was largely provided by local private military and security companies. For example, the United Nations Development Programme (UNDP) contracted a local company that provided a wide range of security services, including armed security escorts and protection services, threat and risk assessments, communications, logistics and dispatch services. The company had been engaged by UNDP as a technical adviser and provided pick-up trucks with armed personnel in order to facilitate the movement of UNDP personnel between

[16] See A/HRC/24/45/Add.2.

Mogadishu International Airport, the United Nations common compound, Villa Somalia, and other areas in Mogadishu.

61. During its visit, the Working Group was informed that several local security providers in Somalia were clan-based militias that operate behind a corporate facade in order to conceal the involvement of individual warlords. Although the Working Group was unable to verify this information, it noted that this pattern, including, implicitly, the risk of being perceived as showing partiality when entering into agreements for the provision of private security, has been seen in other countries and is an issue that international organizations and non-governmental organizations should be cognizant of.

62. In Somalia, the Working Group also found that Bancroft Global Development, which is registered as a charity in the United States of America, worked with the African Union mission in Somalia (AMISOM) and the Somali national forces under the auspices of AMISOM, but was contracted by the United Nations Mine Action Service. Bancroft's employees were recruited as "mentors" for the Somali forces on improvised explosive devices under a contract with the Government of Uganda, which, in turn, was reimbursed by the Government of the United States. According to information provided by Bancroft, their services to AMISOM included training canines to detect explosives, port security, education about mine risks and training on how to safely remove improvised explosive devices. Bancroft reported that, as mentors, its personnel accompany AMISOM troops to the field, but that they were unarmed and did not take part in active combat operations.

63. Bancroft's training and mentoring activities meant that it operated in or in close proximity to conflict zones, and there have been reports of its employees' involvement in active combat operations. The Working Group did not find substantiated evidence of such allegations. Nonetheless, the question arises as to what procedures Bancroft, and the entities with which it works, had in place to ensure that Bancroft personnel did not become part of combat operations.

64. In this regard, the Working Group was of the view that attention should be paid by both Bancroft and those who engage its services to develop rules to prevent such situations and to institute procedures to ensure that they are complied with. The Working Group was informed by the United Nations Mine Action Service that, to avoid this problem, their agreement with Bancroft required that when conducting explosive ordnance disposal and operations to eliminate improvised explosive devices, Bancroft employees must remain a minimum of 500 metres behind any front line. This type of rule might serve as an appropriate safeguard in other contracts as well.[17]

65. Given the sensitivity of Bancroft's operations, the Working Group believes that it is critical that it ensure that its employees are properly vetted and trained. Bancroft told the Working Group that their recruitment process includes a rigorous vetting process, but the Working Group has not been able to verify that claim.

66. The Working Group noted that at least one employee of Bancroft pleaded and was found guilty in a South African court of, inter alia, recruiting persons for mercenary activities in Côte d'Ivoire[18] and providing logistical support for the

[17] Ibid., para. 48.

[18] See High Court of South Africa (Transvaal Provincial Division), case No. A2850/03 of 2 and 20 May 2005 (ZAGPHC 248).

venture. Although this is only one individual, the nature of his activities naturally raises questions with regard to the adequacy of Bancroft's vetting process.

67. Bancroft's code of conduct requires its employees to comply with international human rights and humanitarian law, as well as national laws. The Working Group has no information, however, on what training, if any, is provided to Bancroft employees operating in Somalia on these matters.

68. In sum, Bancroft's proximity to combat and the military nature of the training and mentoring that it provides requires that both Bancroft and those who engage its services exercise the utmost care in ensuring that these matters are clarified and memorialized. The Working Group believes that transparency would of course be enhanced if these types of arrangements were made public.

69. In the conclusions to its report, the Working Group welcomed the efforts of the United Nations to ensure that private security providers have a clean human rights record and encouraged all elements of the United Nations to take a proactive approach to this issue. The Working Group also recommended that the United Nations consider applying the principles contained in the human rights due diligence policy when hiring private security contractors.[19]

V. The way forward

70. The Working Group is of the view that the establishment of United Nations policies and guidelines on the use of armed private security companies, the framework of accountability and other relevant policies are a significant step forward, as they bring more coherence and transparency to the contracting of private military and security companies within the United Nations system. The guidelines are also an important indication that the United Nations now acknowledges that the use of armed guards is a reality and is prepared to take responsibility for such practices.

71. As a tool to regulate the use of armed services, the policy and the Guidelines promulgated by the Department of Safety and Security cannot address all the challenges posed by the use of such companies. They are, however, a starting point for a more comprehensive process that should also address unarmed services provided by these companies, as these services require equal attention and regulation.

72. The Guidelines issued by the Department of Safety and Security increase transparency system-wide by requiring all United Nations agencies, funds and programmes to be notified when any United Nations entity hires armed security services. However, in order to promote transparency, it is important that procurement entities, in particular, make their reporting practices more transparent. Disclosing more information and reporting in more precise ways (while not compromising the security of staff in the field) will help foster more transparency in the practices of the United Nations in contracting for security services.

73. When selecting providers, it is crucial that the United Nations itself not only seek to verify that the company has all the formal arrangements and licenses in order but that it also perform an independent and thorough assessment before contracts are signed instead of relying on the information supplied by the company. The assessment needs to be conducted by a third party to avoid possible conflicts of

[19] A/HRC/24/45/Add.2, para. 76.

interest. Such a screening could serve to prevent the United Nations from hiring companies with a poor or mediocre record of performance, companies that have been accused of human rights violations in the past, companies with ties to parties to the conflict or companies that are otherwise unfit to serve the United Nations. Company screenings could potentially be performed by the Procurement Division of the Secretariat, which could be tasked with maintaining a database on private military and security companies. The Working Group nevertheless acknowledges the challenges that screening entails in light of the limited capacity of the United Nations to perform this task. It is of the view that, at the very least, the Organization should only contract companies with a solid screening system in place.

74. Better contracting and increased oversight would also be enhanced if the United Nations produced an evaluation of performance after the completion of the contract. Such reports could be kept on file with the procurement entity. They could include the assessments of contracting officers, in particular assessments related to such indicators as communications with the company and its personnel, how the company handled risk, how well it responded to and adapted to the local environment and to what degree its personnel acted in accordance with the overall security paradigm of the Organization and in compliance with human rights.

75. Systematically collecting information on the performance of private military and security companies, keeping records and using that information to identify best practices and lessons learned, is likely to contribute to avoiding contracting underperforming companies in future.

76. It should be noted that private military and security companies sometimes perform key tasks within United Nations operations not because they have been hired directly by the Organization directly but as a result of the outsourcing practices of Member States. In point of fact, such companies sometimes provide services within United Nations operations with little knowledge of, or oversight by, the Organization. To address this issue, the United Nations could demand, as part of its approach, not only that different United Nations entities report on their use of private military and security companies, but that Member States also report when they are responsible for hiring such companies.

77. It is also of utmost importance that the United Nations takes the necessary measures to ensure that private security companies and their employees are held accountable for human rights violations, and that access to remedies is guaranteed to victims of such violations. In this regard, the Department of Safety and Security needs to establish a grievance mechanism to receive complaints, including third-party complaints, about private military and security companies under United Nations contracts, to investigate allegations of wrong-doing and to provide accountability for contractors and effective remedies to victims.

78. In order to continue improving its own internal monitoring and oversight mechanisms, the United Nations needs to have a mechanism and standard procedures to exclude underperforming companies, as well as those with poor human rights records, from the procurement lists of all United Nations agencies, programmes and funds. This will require independent investigation, proactive system-wide information sharing about suspect companies and, at the very least, a mechanism whereby those aware of violations by United Nations-contracted private security companies can report complaints to the United Nations for further action. In addition, the Procurement Division needs to make more information publicly

available about the private military and security companies under contract with the United Nations and the specific contracts they carry out. Understandably, some details of security contracts must be kept confidential for security reasons. However, a time period could be established, after the completion of the contract, when security concerns will have lapsed, when details which have previously been omitted can be safely released to the public.

VI. Conclusions and recommendations

79. **While the existing United Nations Guidelines on the Use of Armed Security Services from Private Security Companies can be improved, they cannot address all the challenges which outsourcing security to private contractors poses. The provision of security functions should remain the primary responsibility of Member States, including in providing security to the United Nations and its staff members. In this regard, the United Nations needs to do more to identify and develop security solutions that draw on host countries, Member States or United Nations security staff. It is the view of the Working Group that the United Nations must recognize the risk posed to human rights by the lack of comprehensive regulation of private military and security companies at United Nations operations and should take steps to improve regulation and oversight to prevent human rights violations from occurring.**

80. **Moreover, the United Nations Guidelines pertain exclusively to armed security contractors while many examples, such as the allegations of the abuse of prisoners in detention facilities or sex-trafficking by private security contractors in the context of peacekeeping operations, reveal that unarmed security contractors can also be a threat to human rights, public security and the reputation of their client. In addition, it should be noted that armed or unarmed private security might use, or provide to others, information for harming United Nations personnel or facilities and can, in some instances, present a threat to the Organization and its staff. In this light, the Working Group is of the view that guidelines need to be established to regulate the unarmed services provided by private military and security companies.**

81. **The decision-making process for the use of private security companies, including the criteria for determining that their use is truly a "last resort", should be clarified in the United Nations Guidelines.**

82. **The United Nations Guidelines envisage increased selection, contracting and monitoring requirements to be carried out by security management teams, including daily and monthly inspections. In order to ensure that this is done in an effective manner, security officers in the field should receive adequate training and clear guidelines on issues of contract management and contractor oversight. Personnel should have relevant security service and management expertise to carry out contractor selection, contract design, contractor performance reviews and contractor management. In order to operate effectively they need direct authority over contractors. In addition, contract management guidelines should establish clear rules governing the relationships with contractors in order to minimize the risk of collusion or corruption.**

83. To ensure the effective implementation of the rules outlined in the United Nations Guidelines, it is imperative that the Organization develop appropriate penalties for non-compliance such as:

(a) Fee reductions;

(b) Permanent or temporary debarment of companies from further contracts;

(c) Public naming of contractors by keeping a centralized register of companies linked to as poor performance, criminal investigations, civil suits and/or debarments, and by publishing this information where possible.

84. For complex organizations such as the United Nations, it is also important that information about poor performance or misconduct be shared among the various agencies that contract for security services in order to prevent such companies from being rehired elsewhere.

85. Insufficient transparency and accountability are key reasons for negative public reactions towards private military and security companies. The United Nations Guidelines contain very little to address these issues. The following measures could be taken:

(a) Establishment and publication of clear lines of accountability and responsibility regarding the selection and management of security contractors;

(b) Full publication of United Nations security management operations manuals;

(c) Collection and publication of information regarding the use of armed and unarmed security contractors, including annual or quarterly figures of security guards/contractor personnel for each mission;

(d) Introduction of "security" as a separate budget line by all United Nations organizations;

(e) Publication of all security contract awards and amounts.

86. The United Nations Guidelines could use the purchasing power of the Organization to increase national and international standards by making professional standards a key criterion for the selection of contractors and by including clear guidelines for professional behaviour in United Nations contracts.

87. The current United Nations Guidelines identify general training requirements, but the individual company decides exactly what the training should involve. The Guidelines could include clear and specific minimum training requirements in security service contracts, including duration and content of training, proficiency standards and certified training institutions.[2]

88. The Department of Safety and Security of the Secretariat should maintain oversight of the selection and evaluation of private military and security companies, both armed and unarmed, at field operations.

89. The Working Group encourages all stakeholder groups, academic experts, non-governmental organizations, United Nations human rights and security officials and representatives of the private security industry, to continue to

offer their input and expertise, and to engage with the Department of Safety and Security and United Nations agencies in dialogue on this issue, and requests that the decision-making process be continually revisited at the highest levels within the Organization.

90. **The Working Group also encourages Member States to seek information from United Nations entities as to when and where private military and security companies are used to support United Nations missions and to secure facilities, convoys and staff as this information may influence policymaking and security decision-making processes.**

91. **The Working Group reiterates its call for an international binding instrument to regulate private military and security companies.**